



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Ms. Terri Hale
Legal Assistant to Ms. Betsy Elam
Southlake City Attorney
Fielding, Barrett & Taylor
3400 Bank One Tower
500 Throckmorton Street
Fort Worth, Texas 76102-3821

OR95-1499

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33679.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

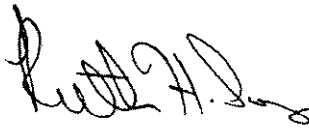
We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request.

On May 19, 1995, we asked you for a copy of the written request for the information at issue so that this office could 1) determine the date the request was made, 2) the date the City of Southlake received the request, and 3) the nature of the records being requested. To date we have not received the requested information, despite our caveat that your failure to submit this information to us in a timely manner would result in the waiver of the act's discretionary exceptions to required public disclosure.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exceptions you raised. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the act and that the information is presumed to be public.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information.¹ See also Gov't Code § 552.352 (distribution of confidential information is a criminal offense). For your convenience, we have attached a list of the types of confidential information that typically must be withheld from the public. If you have any questions regarding this matter, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/rho

Ref.: ID# 33679

Enclosures: Submitted documents
Confidentiality list

¹We agree, however, that any information obtained from either the TCIC or NCIC criminal history information networks must be withheld pursuant to section 552.101 of the Government Code. See generally Open Records Decision No. 565 (1990).

cc: Mr. James Phipps
603 Field Street
Colleyville, Texas 76034
(w/ Confidentiality list)